

SAEED ANWAR, THE SOLE MEMBER §
OF T M ENTERPRISES, LLC, §
A DISREGARDED ENTITY, §
d/b/a ARKADELPHIA JET PEP §
1164 ARKADELPHIA ROAD §
BIRMINGHAM, AL 35204-1811, §

Taxpayer, §

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE. §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 11-786

FINAL ORDER

The Revenue Department assessed Saeed Anwar (“Taxpayer”), the sole member of T M Enterprises, LLC, for State sales tax for May 2006 through April 2010. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on June 28, 2012. The Taxpayer’s representative was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Christy Edwards represented the Department.

The Taxpayer owned and operated a convenience store/gas station, Arkadelphia Jet Pep, in Birmingham, Alabama during the period in issue. He sold gasoline, soft drinks, beer, wine, snacks, etc. at the business.

The Department audited the Taxpayer for the subject period and requested the Taxpayer’s sales records, purchase invoices, and all other relevant records. The Taxpayer provided a handwritten sales journal for part of the audit period, some purchase invoices, and bank statements. He failed, however, to provide any cash register z-tapes for the period.

The Department examiner determined that the monthly sales totals in the handwritten sales journals did not match the sales as reported on the Taxpayer's monthly sales tax returns. The examiner also could not use the Taxpayer's bank records to compute the correct sales tax due. He thus used an indirect purchase mark-up audit to compute the Taxpayer's liability for the period. The examiner's audit report, Department Ex. 2, reads in pertinent part, at 2, 3:

The taxpayer supplied no records of sales from the point of sale such as register readings of Z tapes for the audit period. The monthly sales journals did not contain reported sales tax measure. The bank statements did not contain adequate information to reveal reported sales tax measure. There was no complete or adequate information to determine how the taxpayer arrived at reported taxable sales for the audit period. Due to inadequate records being kept and no audit trail to verify reported sales measure, the most accurate estimation of sales tax measure will be an indirect audit. The indirect audit method used in this audit is a markup of purchases of goods for sale that are subject to sales tax. The purchases are marked up using an average markup of 151%. For example, if a purchase of goods for resale was made for \$3.00 the retail sale would be \$3.00 times 1.51 equals 4.53, the retail sales before sales tax. The average markup is obtained from the Internal Revenue Service. An average markup is calculated from samples of taxpayer returns from the category of Food and Beverage Stores. I believe this to be the best information available to base the estimation of taxable sales for the audit period. No inventory records or any other records were supplied by the taxpayer to the auditor that would affect the inventory of goods for sale. Because no records were obtained that would affect the purchase of goods for sale no adjustments were made for loss of inventory. The result of no adjustments to purchases would be all purchases of goods for taxable sales after markup for gross profit would be the taxable measure.

The Department subsequently entered a preliminary assessment against the Taxpayer based on the examiner's audit report. The Taxpayer's representative petitioned for a review of the assessment. The representative argued that the 51 percent mark-up was excessive because the Taxpayer primarily sold beer, wine, and tobacco products that were marked-up substantially less than 51 percent.

A Department Assessment Officer reviewed the audit and responded that the 51 percent mark-up applied to gasoline stations, and that because the Taxpayer also sold alcohol and tobacco products, the lower 34 percent convenience store mark-up should be applied. The Department accordingly recomputed the tax due and entered the final assessment in issue.

The purchase mark-up audit is a simple, oft-used Department method of determining a taxpayer's sales tax liability where the taxpayer fails to keep accurate sales records. See generally, *GHF, Inc. v. State of Alabama*, S. 09-1221 (Admin. Law Div. 8/10/10); *Thomas v. State of Alabama*, S. 10-217 (Admin. Law Div. O.P.O. 5/18/10); *Alsedeh v. State of Alabama*, S. 03-549 (Admin. Law Div. 11/3/04).

A taxpayer's sales tax liability is computed in a purchase mark-up audit as follows: the taxpayer's total purchases are determined from the taxpayer's own purchase invoices, if complete, or otherwise from purchase information obtained from the taxpayer's vendors. Only merchandise purchased for resale is included. Cleaning and office supplies and other items consumed or used by the taxpayer and not resold are excluded. After total monthly purchases are determined, an average retail mark-up percentage is applied to determine the taxpayer's monthly retail sales. The percentage mark-up used by the Department varies by the type of business engaged in, and is taken from IRS statistical data that is included in the Department's field audit manual. Total retail sales are then multiplied by the .04 percent State sales tax rate to determine the total tax due. A credit for sales tax previously reported and paid is allowed to arrive at the additional tax due.

The Taxpayer in this case failed to keep cash register tapes or other accurate sales records from which the Department could properly compute or verify his sales tax liability

for the subject period. The Department examiner thus correctly computed the Taxpayer's liability pursuant to a purchase mark-up audit using the best information available, i.e., the Taxpayer's purchase information. The final assessment based on that audit is thus affirmed.

The Taxpayer and his representative presumably still object that the reduced 34 percent mark-up is excessive. Most all convenience stores sell tobacco and alcohol products. The 34 percent IRS convenience store mark-up thus takes the low margin sale of tobacco and alcohol products into account. But if the Taxpayer wishes to pursue the issue, he should apply for a rehearing within 15 days of this Final Order and specify what evidence he has showing that the 34 percent mark-up is excessive. The case will then be reset for another hearing, or other appropriate action will be taken.

The final assessment is affirmed. Judgment is entered against the Taxpayer for sales tax, penalties, and interest of \$56,021.02. Additional interest is also due from the date the final assessment was entered, September 1, 2011.

As indicated, the Taxpayer may apply for a rehearing within 15 days from the date of this Final Order. Otherwise, this Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered July 9, 2012.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

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